

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6832 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HANSRAJ SHANKARJI MARWADI (MOCHI)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6832 of 2004
MR ASHISH M DAGLI for Petitioner No. 1
MR AY KOGJE, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu
has challenged his detention order dated 09-01-2004, by
which the petitioner is detained under PASA as a

"bootlegger". Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about solitary criminal case registered against the petitioner. The said case is registered under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. After considering the aforesaid case and after considering statements of some witnesses, the detaining authority has passed the order of detention, which is impugned in this petition.

2) Mr.Dagli, learned advocate for the petitioner has submitted that at the time of passing the detention order, the petitioner was already in judicial custody and the authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail. It is also submitted by the learned advocate for the petitioner that the petitioner has neither moved any bail application nor any such bail application is pending, therefore, there is no material to show as to on what basis the detaining authority has come to the conclusion that the petitioner will be released on bail and will continue his activity and, therefore, subjective satisfaction arrived at by the detaining authority stands vitiated.

3) To substantiate his say, learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

"There is no dispute about the factual aspects.

In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for

bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

4) Unfortunately, no affidavit in reply has been filed by the authority, therefore, the averment made in the petition is not controverted by the authority. Under these circumstances, there is no other alternative but to set aside the order of detention on the aforesaid ground that the detaining authority has not stated as to on what basis it has reached the conclusion that the petitioner will be released on bail and will continue his activity.

6) On the aforesaid ground, this petition is allowed. The order of detention dated 09-01-2004 is quashed and set aside. The detenu, Hansraj Shankarji Marwadi (Mochi) is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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